

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ASHLEY C.,

Claimant,

vs.

REDWOOD COAST REGIONAL CENTER,

Service Agency.

OAH No. 2011060900

DECISION

Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, heard this matter in Ukiah, California, on July 14, 2011, and August 4, 2011.

Nancy Ryan, Attorney, represented Redwood Coast Regional Center.

Deanna C., represented her daughter claimant Ashley C., who was also present at the hearings.

The record was left open for the parties to submit additional documentation. Additional documents were received into evidence. The record was closed and the matter was submitted for decision on August 31, 2010.

ISSUE PRESENTED

Should Redwood Coast Regional Center continue to fund 195 hours of Intensive Behavioral Services per month?

FACTUAL FINDINGS

1. Ashley C. (claimant) is a 21 year old woman, who has been diagnosed with Seizure Disorder, Moderate Intellectual Delay, Static Encephalopathy, Obsessive Compulsive Disorder, sleeping disorder and has vision problems. In 2011, claimant began grabbing at the side of her head and appeared to be in pain as she would have tear drops coming from her eyes. This behavior occurred during the second session of the hearing in

this matter. Claimant is severely disabled with limited communication skills and an extensive history of unpredictable aggressive behaviors. Claimant is eligible for regional center services based on her developmental disabilities pursuant to the Lanterman Developmental Disabilities Services Act (“the Lanterman Act”), section 4500 et seq.¹

2. Claimant has difficulty with transitions. She experiences anxiety when there are changes in her routine and environment, which may lead to tantrums and aggressive behavior. Claimant has a very difficult time waking, getting up and performing tasks in the morning. Claimant has a need for a large area of personal space between herself and others. She displays aggressive behaviors including slapping, scratching, poking and hitting any individual, known or unknown to her, that invades her sense of personal space. This has become more evident since claimant has started attending college classes with larger groups of students. Claimant can also display aggressive behavior in the following circumstances: when someone turns their back toward claimant or bends over in front of her; if someone is talking on the phone while in claimant’s presence; when claimant is asked to do non-preferred activities; when she is denied things; or when she is unable to communicate her needs and wants. Claimant engages in unsafe behavior when a passenger in a car (such as slapping, scratching, poking or pinching other passengers in the vehicle and grabbing the driver’s hair while driving).

3. Claimant’s mother, Deanna C., has participated in numerous classes and workshops related to developmental disabilities. Additionally, Deanna C. has received in excess of 60 certificates of completion for continuing education related to working with individuals who have special needs and developmental disabilities. Deanna is actively involved in her daughter’s life and works closely with Ashley’s care givers. Deanna has created a chart of step-by-step task picture prompts that contain photographs of Ashley’s current care givers. Ashley is currently provided with 195 hours of Intensive Behavioral Services per month through Multiplicity. Ashley has demonstrated behavioral improvement.

4. On May 18, 2011, Redwood Coast Regional Center issued a Notice of Proposed Action letter proposing to reduce Ashley’s 195 hours of Intensive Behavioral Services² per month as follows. Redwood Coast Regional Center agreed to fund 102 hours per month of Intensive Behavioral Services (87 hours per month direct one-to-one support to address claimant’s behavioral concerns and skill deficits and 15 hours per month of clinical observation, training, and supervision), with an additional 65 hours per month of Personal Assistant Services. Redwood Coast Regional Center would also continue to fund 48 hours

¹ All statutory references are to the Welfare and Institutions Code unless otherwise noted.

² The 195 hours per month of intensive behavioral therapy are comprised of 180 hours of direct one-to-one support to address claimant’s behavioral concerns and skill deficits. The remaining 15 hours per month consists of clinical observation, training, and supervision.

per quarter of parent vouchered respite. Claimant's mother timely submitted a Fair Hearing Request on behalf of Claimant.

5. Redwood Coast Regional Center asserts that the type of service claimant is currently receiving in the morning is not "Intensive Behavioral Services," but rather, "Personal Assistant Services." Redwood Coast Regional Center contends claimant's current assessment does not warrant 195 hours per month of intensive behavioral services and that claimant's needs will be properly met with the appropriate combination of 102 hours per month of intensive behavioral services, 65 hours per month of personal assistant services, and 48 hours per quarter of parent vouchered respite. Additionally, Redwood Coast Regional Center believes the remaining 28 hours (the difference between 195 hours of intensive behavioral services and 167 combined hours of intensive behavioral services and personal assistant services) should be provided through natural supports.

6. Claimant's mother contends that the intensive behavioral services should remain at 195 hours, if not increased, in order for claimant to meet her five year plan of moving into an independent living situation. Claimant's mother is concerned that the proposed personal assistant services vendor, Mendocino Care Givers, will not properly and safely provide services to claimant. Claimant's mother's concern stems from claimant's increased aggressive behavior, the severity of claimant's seizure disorder, and her understanding of the reputation of Mendocino Care Givers. Additionally, transition is extremely difficult for claimant and a change in her caregivers will be very disruptive to claimant's routine and adversely affect her health and well being.

7. The morning time is the most difficult time of day for claimant and she often displays aggressive behavior and tantrums during this time. Claimant was described by her caregivers as "not a morning person" who often requires hands on assistance to get her out of bed. Teachable moments for claimant do not occur in the morning; she is more receptive to learning in the afternoon.

8. Iris Peters, M.S., an Autism Spectrum Disorder Clinical Specialist and Behaviorist at Redwood Coast Regional Center, was present and testified at hearing. Peters has 25 years of experience as a behaviorist. Peters stated that the purpose of intensive behavioral services is to teach parents and caregivers strategies to use and implement in addressing target behaviors. The goal is to target negative behaviors and replace or diminish those behaviors with positive behavior intervention. Intensive behavioral services can be a very stylized intervention that is controlled in terms of antecedents and conditions. It is a long process during which time frequent progress assessments are made. The goal is to have systematic application of the principles of intensive behavioral services in more naturalistic settings. Thus, intensive behavioral services can be implemented across various settings and may involve numerous objectives for changing behavior.

9. Peters stated that the services claimant currently receives in the mornings are not intensive behavioral services, but rather personal assistant services. Due to the difficulty claimant experiences in the morning, it is not the best time for her to learn behavior modification. Peters opined that claimant could receive the same morning services from a properly trained personal assistant with the hope that claimant's morning transition would be less stressful and a good start to her day. Peters recommended a three-month period during which time claimant's current intensive behavioral services vendor, Multiplicity, would train a morning personal assistant caregiver, in order to facilitate a transition of claimant's morning routine. Peters voiced concerns about the intensive behavioral services claimant has received in light of the hearing testimony from several of claimant's caregivers.

10. Adam Bulbulia, M.S., B.C.B.A., was present and testified at hearing. Bulbulia is a Board Certified Behavior Analyst, employed by Multiplicity. Claimant was initially evaluated by Multiplicity in December of 2005.³ Bulbulia stated that during the last year, claimant has learned new skills and demonstrated behavioral improvements. However, during this time, claimant's resistant, tantrumming and physical aggressive behaviors have all increased. Bulbulia also noted that claimant had several medical related issues occur during this time period and that the physical pain and discomfort claimant experienced was an antecedent for her problematic behaviors. Bulbulia currently works with approximately 64 clients and ranks claimant as one of his most risky clients based on the intensity of her aggressive behavior. Bulbulia opined that claimant requires at least 195 hours per month of intensive behavioral services and would recommend she receive more than 195 hours per month. Bulbulia stated claimant may always require some form of intensive behavioral services.

11. The October 14, 2010, Mendocino County Special Education Local Plan Area, (SELPA) Individualized Education Program describes claimant's emotional state as "consistently inconsistent and can change very quickly."

12. The morning services currently provided by Multiplicity are personal support services, not intensive behavioral services. The evidence did not establish an overall improvement in claimant's behavioral skills to support a reduction of actual "intensive behavioral services."

13. The testimony of all witnesses was forthright and credible in all respects.

LEGAL CONCLUSIONS

1. The Lanterman Act provides for regional centers to secure "services and supports" for persons with developmental disabilities. Pursuant to section 4512, subdivision (b), "specialized services and supports or special adaptations of generic services and

³ In December of 2005, claimant was evaluated by Charles Chojnacki, M.A., at the Association of Behavior Consultants, Inc. Chojnacki later formed Multiplicity.

supports” are to be “directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” In determining appropriate services and supports, the regional center must consider “the needs and preferences of the consumer, or when appropriate, the consumer’s family,” and shall include a range of service options proposed by the Individual Program Plan (IPP) team, the effectiveness of each option in meeting IPP goals, and the cost-effectiveness of each option. Services and supports in the IPP may include behavior training and behavior modification programs, personal care, domiciliary care, facilitating circles of support and natural supports. (§§ 4646, subds. (a),(d), 4512, subds. (b),(e) & (f).)

2. Intensive behavioral intervention is a form of applied behavioral analysis. The two terms are sometimes used interchangeably. Pursuant to section 4686.2, subdivision (d)(1), the Legislature defined “applied behavioral analysis” as, “the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.” In subdivision (d)(2), the Legislature defined “intensive behavioral intervention” as “any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual’s needs and progress.”

3. section 4646.4, subdivision (a), states:

(a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer’s individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center’s purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family’s responsibility for providing similar services and supports for a minor child without

disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

4. section 4659, subdivision (c),⁴ provides, in pertinent part:

Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. If, on July 1, 2009, a regional center is purchasing that service as part of a consumer's individual program plan (IPP), the prohibition shall take effect on October 1, 2009.

Discussion

5. Claimant requires behavioral services to address her very aggressive and unpredictable behavior. The services currently provided to claimant in the morning although identified as "intensive behavioral therapy" are personal assistant services. Claimant's current status is not conducive to morning intensive behavioral therapy prior to attending school. Claimant's morning needs can be met with a qualified and properly trained personal assistant caregiver.

Pursuant to section 4686.2, subdivision (d), section 4512, subdivision (b), and section 4646.4, subdivision (a), and by reason of the matters set forth in Findings 1, 2, 7, 8, 9, and 11 through 13, Redwood Coast Regional Center shall fund 65 hours per month of personal assistant services.

6. Substituting 65 hours per month of personal assistant services to claimant, reduces her 195 hours of intensive behavioral therapy to 130 hours per month. Pursuant to section 4686.2, subdivision (d)(1) and (2), and by reason of the matters set forth in Findings 1 through 13, the evidence established claimant's need of the 130 hours per month of intensive behavioral services.

⁴ Redwood Coast Regional Center's Notice of Proposed Action cites section 4659, subdivision (c), as a basis for reducing claimant's intensive behavioral services. The evidence established that section 4659, subdivision (c), was irrelevant to this proceeding.

ORDER

The appeal of claimant, Ashley C., is granted-in-part and denied in part, as set forth below.

1. The 195 hours of intensive behavioral therapy will be reduced by 65 hours of personal assistant services.

2. Redwood Coast Regional Center will fund 130 hours per month of intensive behavioral services for claimant. The 130 hours will consist of 115 hours per month of direct one-to-one support to address claimant's behavioral concerns and skill deficits, and 15 hours per month of clinical observation, training, and supervision.

3. Redwood Coast Regional Center will fund any assessments and evaluations it determines are necessary to implement the 130 hours per month of intensive behavioral services.

4. Redwood Coast Regional Center will fund 48 hours per quarter of parent vouchered respite.

DATED: _____

DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.